DUGAN PRODUCTION CORP.

IBLA 87-383 Decided February 1, 1989

Appeal from a determination of the Director, Minerals Management Service, assessing late payment charges. MMS-86-0318-O&G.

Affirmed.

1. Oil and Gas Leases: Royalties--Payments: Generally

Late payment interest charges are properly assessed if royalty payments for oil and gas leases are underpaid when due.

APPEARANCES: Robert G. Stovall, Esq., Farmington, New Mexico, for appel- lant Dugan Production Corporation; Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Dugan Production Corporation (Dugan) has appealed from a February 24, 1987, decision by the Assistant Director for Program Review, Minerals Management Service (MMS), sustaining an assessment of $1,226.50 imposed for late payment of royalties. The assessment was first made by a bill for collection sent to Dugan by MMS on April 4, 1986, for late royalty payments made for gas produced from March 1981 through December 1982.

The facts are not in dispute. Dugan produced and sold gas from two leases from March 1981 through December 1982. Four years later, the pipeline purchaser of the gas reported an increase in the amount of the gas it had purchased from Dugan in 1981 and 1982. Dugan then paid the additional royalty due on the increased production reported by the pipeline. Thereafter, MMS billed Dugan for late payment of the additional royalties.

Dugan contends that the royalties were not paid late. Dugan explains that:

> Because of the realities of field operations, and measurement practices, Dugan has no real control of the measurement practices of the pipelines. Only the pipeline has the ability and facilities to measure the gas. In the case of the contracts in question, Dugan is paid for the residue gas and extracted liquids, the volumes of which can only be determined after processing, all of

> which is done by the purchaser. When Dugan received its settlement statements from the purchase upon the original sales, it had no indication that the settlement was likely to be revised.

(Statement of Reasons (SOR) at 4).

Proceeding from this analysis, Dugan argues, first, that the situation presented does not fall within the provisions of the current Departmental regulation providing for late payment charges, but that, even if the regulation were applicable, that it could not be relied upon in this case because the revision of the amount of gas reported by the pipeline amounted to a "new current sale" which would therefore take the transaction outside the late payment regulation (SOR at 6). Dugan argues also that neither the current regulations codified at 30 CFR 218.102, nor the Federal Oil and Gas Royalty Act of 1982 (FOGRMA), 30 U.S.C. | 1721 (1982), can be relied upon to authorize a late charge for lease production occurring prior to the enactment of FOGRMA.

Pursuing this reasoning, it is contended by Dugan that the current scheme requiring late payment charges is unfair and contrary to the prac-tice followed by the Department before FOGRMA became effective, a practice which took into account the reality that gas must be sold to, and measured by, pipelines who exercise total control over gas measurement. It is therefore unreasonable, Dugan states, to charge interest on the payment which it made as soon as it became known it was due, and the charge amounts to a "double penalty" (SOR at 6). Finally, Dugan takes the position that the late payment charges made by MMS are grounded entirely upon an instruc-tion found in the MMS Payor's Handbook and therefore lack a foundation in law.

[1] The regulation in effect throughout the period March 1981 through December 1982, provided pertinently: "The failure to make timely or proper payment of any monies due pursuant to leases, permits, and contracts subject to these regulations will result in the collection of the amount due and * * * in the assessment and collection of a late payment charge." 30 CFR 221.80, 45 FR 84764 (Dec. 23, 1980) (now 30 CFR 218.102). The Department's authority to assess late payment charges prior to the effective date of FOGRMA is well established. Amoco Production Co., 78 IBLA 218 (1988); Peabody Coal Co., 72 IBLA 337 (1983). Dugan's arguments simply ignore the existence of this pre-FOGRMA regulation, and assume that the 1981-82 pro-duction would have been free from a requirement to pay interest on late payments were it not for commencement in effect in 1983 of the late payment provision of FOGRMA. This is incorrect. There has been, at least since February 1, 1981, a requirement in effect that late payment charges be made for late payment of royalty.

But the payment at issue was made by Dugan following the effective date of FOGRMA. It therefore fell directly within the provision of 30 U.S.C. | 1721 (1982) which requires that interest be collected by the Department

on a late payment made after January 12, 1983. 30 U.S.C. | 1721(a) (1982).
Pursuant to the statute, interest is to be charged on such payments "at the rate applicable under section 6621 of Title 26." Id. This changes the rate at which interest is calculated, since under the 1980 regulation, interest was calculated at "the rate calculated by the Department of the Treasury as
the current value of funds to the Treasury based on a recent 3-month period." 30 CFR 221.80. The statutory rate required by 26 U.S.C. | 6621 (1982) makes use of the adjusted prime rate charged by banks calculated as described in the statute. 26 U.S.C. | 6621(b) (1982). Contrary to Dugan's arguments, the only change made by FOGRMA in this subject area concerns the manner of calculating the interest on late payments. The requirement that lessees pay interest on late royalty payments has been a requirement since February 1, 1981, and was continuous throughout the 1981-82 production from Dugan's leases.

There is therefore no inconsistency between pre-FOGRMA Departmental practice regarding late payment interest charges and the provision of 30 U.S.C. | 1721 (1982) authorizing collection of late payment charges. This circumstance is entirely consistent with the statement of Congressional findings and purposes which introduces section 1721 by observing that the purpose of FOGRMA is "to clarify, reaffirm, expand, and define the authorities and responsibilities of the Secretary of the Interior to implement and maintain a royalty management system for oil and gas leases on Federal land, Indian land, and the Outer Continental Shelf." 30 U.S.C. | 1701(b)(2) (1982). But because the payment made by Dugan was made after FOGRMA became effective, interest calculation at the bank rate set by section 1721 was proper. Had FOGRMA not been in effect, interest would still have been properly assessed, but it would have been calculated at the treasury rate provided by Departmental regulation 30 CFR 221.80. In any event the payment made by Dugan was late, not having been made in the month following production and removal from the lease, and interest was therefore properly payable. Cities Service Oil & Gas Corp., 104 IBLA 291 (1988).

Cities Service Oil & Gas Corp. involved a situation where a lessee had been engaged for some time in a dispute with the purchaser of gas produced from a Federal lease. Cities Service argued that it should not be required to pay royalty until the dispute with its purchaser was settled and payment received. The position taken by Cities Service was the same as that taken by Dugan: The time of payment was not the result of any action by the lessee but was caused by conditions beyond its control. In that case it was observed, pertinently:

> MMS asserts and appellant does not deny that the standard Federal offshore lease form similarly sets out the time that royalties are due as follows: "When paid in value, royalties on production shall be due and payable monthly on the last day of the month next following the month in which the production is obtained." * * * Since Cities Service did not pay its royalties as required by its

> lease and within the meaning of the regulations, MMS properly assessed interest as a late charge.

104 IBLA at 295. The same general principle applies here.

Seeking to avoid this result, Dugan argues that until the pipeline made its late report in 1986 there had been no sale. If there had been no sale, no royalty was due. When the sale (the revised production report) was finally made and Dugan was paid, Dugan paid the royalty due at once. There was therefore a timely payment, it is argued, and the transaction does not merit a late charge. Granting the premise of this argument (that a revised production report by the pipeline constituted a sale under the terms of the contract between the pipeline and Dugan), there is no legal foundation for the conclusion reached by Dugan.

As was explained previously, royalty is due when gas is removed from a lease. 30 U.S.C. | 226(b) and (c) (1982). Regardless whether Dugan's characterization of the revision by the pipeline of its production figures for 1981-82 as a sale is correct, the fact remains that gas for which royalty was paid in 1986 was removed from the lease in 1981 and 1982.

The Mineral Leasing Act, 30 U.S.C. | 226(b) and (c) (1982), provides that royalty shall be paid upon "production removed or sold from the lease." As counsel for MMS points out, the standard Federal lease repeats the statutory language and makes either removal or sale an event which triggers the requirement to pay royalty. Dugan has not challenged the assertion by MMS that this language appears in the leases at issue. Under provisions of the Mineral Leasing Act, therefore, royalty became due the month after the gas was removed from the lease. Cities Service Oil & Gas Corp., supra.

Dugan's argument that it is unfair to charge it for a late payment which was caused by the actions of another corporation, overlooks the fact that it is also unfair to make the United States bear the cost of a delay in payment over which it had no control. The pipeline is not the agent of the United States so that it can be said that the United States should somehow be responsible for its actions. The pipeline was Dugan's customer. The United States cannot be made to bear the consequences of the conduct of contractual relations between Dugan and the pipeline. Provisions of FOGRMA and the Mineral Leasing Act require that the Department, in the proper man-agement of the mineral resources of the United States, charge and collect interest for royalties which are not timely paid, for whatever reason.

Finally, Dugan is, of course, correct when it argues that the MMS Payor's Handbook lacks the force of law. See, e.g., Chevron U.S.A. Inc., 105 IBLA 21, 26 n.5 (1988). The handbook, however, is not the authority on which the action taken by MMS ultimately rests. That authority, as explained above, derives from Departmental regulations promulgated to implement FOGRMA and the Mineral Leasing Act.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.l, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge